

17 mac



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH SERVICES

Jeffrey A. Meyers
Commissioner

Lisa M. Morris
Director

29 HAZEN DRIVE, CONCORD, NH 03301
603-271-4501 1-800-852-3345 Ext. 4501
Fax: 603-271-4827 TDD Access: 1-800-735-2964
www.dhhs.nh.gov

November 5, 2018

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division of Public Health Services, to exercise a renewal option and amend an existing **sole source** contract with Bio-Rad Laboratories, Inc., Vendor #177854-R002, 1000 Alfred Nobel Drive, Hercules, CA 94537, by increasing the Price Limitation by \$49,275 from \$49,200 to an amount not to exceed \$98,475 to provide maintenance and repair services for the Bio-Rad Evolis laboratory equipment, and extend the completion date from December 11, 2018 to December 31, 2021 effective upon the date of Governor and Council approval. This agreement was originally approved by the Governor and Executive Council on June 15, 2016 (Item # 11B). 100% General Funds.

Funds are available in the following account(s) for State Fiscal Year (SFY) 2019, and are anticipated to be available in SFY 2020 and SFY 2021 upon the availability and continued appropriation of funds in the future operating budgets, with authority to adjust amounts within the price limitation and adjust encumbrances between State Fiscal Years through the Budget Office, without approval from Governor and Executive Council, if needed and justified,.

05-95-90-903010-7966 HUMAN SVS, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, PUBLIC HEALTH LABORATORIES

Fiscal Year	Class / Account	Class Title	Job Number	Budget
SFY 2016	024-500225	Maintenance other than Bldg.-Grnds.	90059000	\$16,400
SFY 2017	024-500225	Maintenance other than Bldg.-Grnds.	90059000	\$16,400

SFY 2018	024- 500225	Maintenance other than Bldg.-Grnds.	90059000	\$16,400
SFY 2019	024- 500225	Maintenance other than Bldg.-Grnds.	90059000	\$16,425
SFY 2020	024- 500225	Maintenance other than Bldg.-Grnds.	90059000	\$16,425
SFY 2021	024- 500225	Maintenance other than Bldg.-Grnds.	90059000	\$16,425
			Total	\$98,475

EXPLANATION

This agreement is **sole source** because service for this equipment requires a field service engineer who is trained and authorized by the Contractor, and parts and software updates that are proprietary to Bio-Rad Laboratories, Inc.

The purpose of this agreement is to provide onsite service and maintenance and remote technical assistance for the Evolis system located at the New Hampshire Public Health Laboratory (NPHL). The Evolis System is a self-contained microplate processor that is used for automated enzyme immunoassays testing. This instrumentation allows for screening and diagnosis of many infectious diseases, including Human Immunodeficiency Virus (HIV), Hepatitis C Virus (HCV), Hepatitis A Virus (HAV) and others. The NPHL performs this testing in collaboration with the NH Bureau of Infectious Disease Control, and also processes samples for the Department of Corrections and the Manchester and Nashua Public Health Departments.

As referenced in Exhibit C-1 of this contract, this Agreement has the option to extend for up to three (3) additional year(s), contingent upon satisfactory delivery of services, available funding, agreement of the parties and approval of the Governor and Council. The Department is satisfied with the performance of the Contractor during the initial three years of this Contract. This request, if approved, will exercise the three (3) available additional years.

Notwithstanding any other provision of the Contract to the contrary, no services shall continue after June 30, 2019, and the Department shall not be liable for any payments for services provided after June 30, 2019, unless and until an appropriation for these services has been received from the state legislature and funds encumbered for the SFY 2020-2021 biennium.

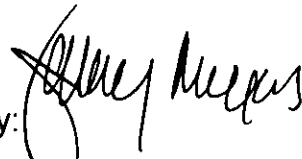
Should the Governor and Executive Council not approve this request, the Department may not have be able to maintain the EVOLIS System an may not be able to process Enzyme immunoassays (EIA) tests to meet the goals for disease detection, disease prevention, and outbreak investigation.

Area served: Statewide.

Source of Funds: 100% General Funds.

Respectfully submitted,


for Lisa M. Morris
Director

Approved by: 
Jeffrey A. Meyers
Commissioner



State of New Hampshire
Department of Health and Human Services
Amendment #1 to the Evolis System Maintenance

This 1st Amendment to the Evolis System Maintenance contract (hereinafter referred to as "Amendment #1") dated this 10th day of October, 2018, is by and between the State of New Hampshire, Department of Health and Human Services (hereinafter referred to as the "State" or "Department") and Bio-Rad Laboratories, Inc., (hereinafter referred to as "the Contractor"), a corporation with a place of business at 1000 Alfred Nobel Drive, Hercules, CA 94547.

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on June 15, 2016, (Item #11B), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract and in consideration of certain sums specified; and

WHEREAS, the State and the Contractor have agreed to make changes to the scope of work, payment schedules and terms and conditions of the contract; and

WHEREAS, pursuant to Form P-37, General Provisions, Paragraph 18, and Exhibit C-1, Revisions to General Provisions Paragraph 5, the State may modify the scope of work and the payment schedule of the contract upon written agreement of the parties and approval from the Governor and Executive Council; and

WHEREAS, the parties agree to extend the term of the agreement and increase the price limitation to support continued delivery of these services; and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Contract and set forth herein, the parties hereto agree to amend as follows:

1. Form P-37 General Provisions, Block 1.7, Completion Date, to read:
December 31, 2021.
2. Form P-37, General Provisions, Block 1.8, Price Limitation, to read:
\$98,475.
3. Form P-37, General Provisions, Block 1.9, Contracting Officer for State Agency, to read:
Nathan D. White, Director.
4. Form P-37, General Provisions, Block 1.10, State Agency Telephone Number, to read:
603-271-9631.

New Hampshire Department of Health and Human Services
Evolis System Maintenance



This amendment shall be effective upon the date of Governor and Executive Council approval.
IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

State of New Hampshire
Department of Health and Human Services

11/8/18
Date

[Signature]
Name: Patricia Tilley
Title: Deputy Director

Bio-Rad Laboratories, Inc.

October 23, 2018
Date

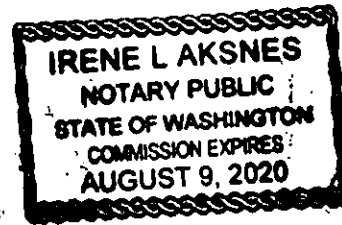
[Signature]
Name: Janette J. Stockert
Title: Contracts Analyst
Customer Care, Americas

Acknowledgement of Contractor's signature:

State of Washington, County of King on October 23, 2018, before the undersigned officer, personally appeared the person identified directly above, or satisfactorily proven to be the person whose name is signed above, and acknowledged that s/he executed this document in the capacity indicated above.

[Signature]
Signature of Notary Public or Justice of the Peace

Irene Aksnes, Notary
Name and Title of Notary or Justice of the Peace



My Commission Expires: August 9, 2020

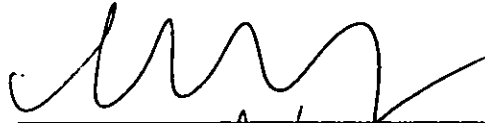
New Hampshire Department of Health and Human Services
Evolis System Maintenance



The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

11/19/18
Date


Name: Megan A. Kelly
Title: Attorney

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: _____ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:
Title:

State of New Hampshire

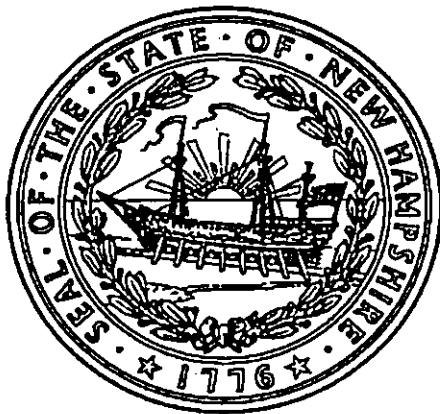
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that BIO-RAD LABORATORIES, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on March 11, 1999. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 310350

Certificate Number: 0004194062



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 5th day of October A.D. 2018.

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

CERTIFICATE OF VOTE/AUTHORITY

I, Janette J. Stockert of the Bio-Rad Laboratories, Inc., do hereby certify that:

1. I am the Contracts Analyst of Bio-Rad Laboratories, Inc.:

This company may enter into any and all contracts, amendments, renewals, revisions or modifications thereto, with the State of New Hampshire, acting through its Department of Health and Human Services.

RESOLVED: That the Contracts Analyst is hereby authorized on behalf of this company to enter into said contracts with the State, and to execute any and all documents, agreements, and other instruments, and any amendments, revisions, or modifications thereto, as he/she may deem necessary, desirable or appropriate, and Janette J. Stockert is the Contracts Analyst of the company.

2. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of this 24th day of October, 2018.

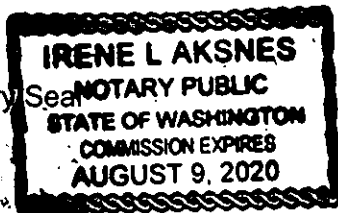
IN WITNESS WHEREOF, I have hereunto set my hand as the Contracts Analyst of the company this 24th day of October, 2018.

Janette J. Stockert

Name: Janette J. Stockert
Title: Contracts Analyst
Company Name: Bio-Rad Laboratories, Inc.

STATE OF Washington
COUNTY OF King

On Oct 24, 2018, before the undersigned officer, personally appeared the person identified directly above, or satisfactorily proven to be the person whose name is signed above, and acknowledged that s/he executed this document in the capacity indicated above.



Irene L Aksnes

Signature of Notary or Justice of the Peace

Irene L Aksnes, Notary
Name/Title of Notary or Justice of Peace

My Commission Expires: August 9, 2020



Jeffrey A. Meyers
Commissioner

Marcella Jordan Bobinsky
Acting Director

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES

29 HAZEN DRIVE, CONCORD, NH 03301-6503
603-271-4612 1-800-852-3345 Ext. 4612
Fax: 603-271-4827 TDD Access: 1-800-735-2964



11B mac

April 12, 2016

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division of Public Health Services, Public Health Laboratories to enter into a **sole source** agreement with BIO-RAD LABORATORIES, INC. (Vendor Code #177854/R002) 1000 Alfred Nobel Drive, Hercules, CA, 94547, to provide maintenance and repair services for the EVOLIS System in an amount not to exceed \$49,200, effective upon Governor and Executive Council approval, through December 11, 2018. The source of the funding is 100% General Funds.

Funds to support this request are available in the following account in State Fiscal Year 2016 and anticipated to be available in State Fiscal Year 2017 and State Fiscal Year 2018 upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between State Fiscal Years through the Budget Office without Governor and Executive Council approval, if needed and justified.

05-95-90-903010-7966 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, PUBLIC HEALTH LABORATORIES

Fiscal Year	Class	Title	Activity Code	Amount
2016	024-500225	Maintenance other than Build-Gm	90059000	\$16,400
2017	024-500225	Maintenance other than Build-Gm	90059000	\$16,400
2018	024-500225	Maintenance other than Build-Gm	90059000	\$16,400
			Total:	\$49,200

EXPLANATION

The purpose of this agreement is to provide service and maintenance to the EVOLIS System. The EVOLIS System performs Enzyme immunoassays (EIA) testing which is designed to detect antigens or antibodies by producing an enzyme triggered color change. Enzyme immunoassays tests are commonly used to detect a variety of infectious diseases.

This request is **sole source** because BIO-RAD LABORATORIES, INC. is the only vendor that can provide service and maintenance to the EVOLIS System.

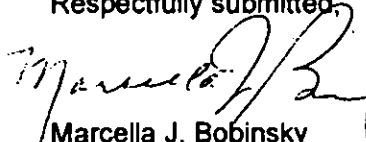
This agreement contains renewal language that allows for up to three (3) additional years, subject to the continued availability of funds, satisfactory performance and approval by the Governor and Executive Council.

Should the Governor and Executive Council not approve this request the Public Health Laboratories would not have access to maintenance and repair of the EVOLIS System would leave the lab unable to process Enzyme immunoassays (EIA) tests.

Area Served: Public Health Laboratories

Source of Funds: 100% General Funds

Respectfully submitted,



Marcella J. Bobinsky
Acting Director

Approved by:



Jeffrey A. Meyers
Commissioner



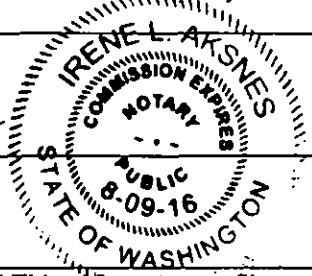
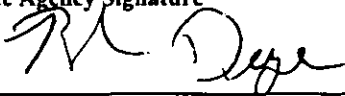

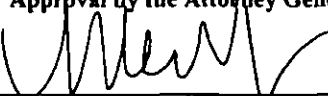
Subject: EVOLIS System Maintenance

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Health and Human Services		1.2 State Agency Address 129 Pleasant Street Concord, NH 03301-6504	
1.3 Contractor Name BIO-RAD LABORTORIES, INC.		1.4 Contractor Address 1000 Alfred Nobel Drive Hercules, CA 94547	
1.5 Contractor Phone Number 1-800-879-2289 666-8111 EXT 1883	1.6 Account Number 05-95-90-903010-7966	1.7 Completion Date 12/11/2018	1.8 Price Limitation \$49,200
1.9 Contracting Officer for State Agency Eric D. Borrin		1.10 State Agency Telephone Number 603-271-9558	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Janette J. Stockert Contract Administration Supervisor Government Contracts / Paralegal	
1.13 Acknowledgement: State of <u>WA</u> , County of <u>KING</u> On <u>12/30/2015</u> before the undersigned ^{Authorized Signer} <u>12/30/2015</u> officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary or Justice of the Peace Irene Aksnes, Notary			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Brock S. Super Bureau Chief 	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  Megan A. Le, Attorney On: <u>6/3/16</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each

certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.



Exhibit A

Scope of Services

1. SCOPE OF SERVICES

- 1.1 The Contractor shall provide service and maintenance to the EVOLIS System, a self-contained microplate processor for automated enzyme immunoassays (EIA) testing, which shall include:
 - 1.1.1 Service will be provided 8:00 a.m. to 6:00 p.m., Monday through Friday, excluding holidays recognized by the State of New Hampshire or the contractor.
 - 1.1.2 Unlimited toll-free telephone support service advice.
 - 1.1.3 Diagnostic services will be available during normal business hours via telephone, e-mail, or remote access. The Contractor shall respond by telephone within twenty-four (24) hours of the initial call for service.
 - 1.1.4 If the problem cannot be solved over the phone or by remote access, an on-site visit will be scheduled within 72 hours of the initial request.
 - 1.1.5 On-Site Preventative Maintenance (PM) inspections shall be performed twice per contract year at a mutually agreeable time which may be performed and combined with a repair visit and shall include:
 - 1.1.5.1 Perform Preventative Maintenance in accordance with the manufacturer's operating instructions.
 - 1.1.5.2 Testing to assure the equipment is functioning according to factory acceptable standards.
 - 1.1.5.3 Provide software and documentation for updates and new releases.
 - 1.1.5.4 Provide immediate notification of critical software problems.
 - 1.1.5.5 Labor, parts, travel expenses, and telephone assistance costs related to this agreement are at no charge to the Department.



Method and Conditions Precedent to Payment

1. The State shall pay the Contractor an amount not to exceed the Price Limitation on Form P37, Block 1.8, for the services provided by the Contractor pursuant to Exhibit A, Scope of Services.
2. Payment for services shall be paid on an annual basis as follows:
 - 2.1. Upon approval of Governor and Executive Council, the Contractor shall invoice the Department in the amount of \$16,400.
 - 2.2. The Contractor shall invoice the Department in the amount of \$16,400 each subsequent year for the life of the contract.
 - 2.3. The State shall make payment to the Contractor within thirty (30) days of receipt and approval of the invoice for Contractor services provided pursuant to this Agreement.
 - 2.4. Invoices and reports identified in Section 3.1 must be submitted to:
NH Public Health Laboratories
29 Hazen Drive
Concord, NH 03301
Attn: Financial Administrator
3. Notwithstanding anything to the contrary herein, the Contractor agrees that funding under this Contract may be withheld, in whole or in part, in the event of noncompliance with any State or Federal law, rule or regulation applicable to the services provided, or if the said services have not been completed in accordance with the terms and conditions of this Agreement.



SPECIAL PROVISIONS

Contractors Obligations: The Contractor covenants and agrees that all funds received by the Contractor under the Contract shall be used only as payment to the Contractor for services provided to eligible individuals and, in the furtherance of the aforesaid covenants, the Contractor hereby covenants and agrees as follows:

1. **Subcontractors:** DHHS recognizes that the Contractor may choose to use subcontractors with greater expertise to perform certain health care services or functions for efficiency or convenience, but the Contractor shall retain the responsibility and accountability for the function(s). Prior to subcontracting, the Contractor shall evaluate the subcontractor's ability to perform the delegated function(s). This is accomplished through a written agreement that specifies activities and reporting responsibilities of the subcontractor and provides for revoking the delegation or imposing sanctions if the subcontractor's performance is not adequate. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions.

When the Contractor delegates a function to a subcontractor, the Contractor shall do the following:

- 1.1. Evaluate the prospective subcontractor's ability to perform the activities, before delegating the function
- 1.2. Have a written agreement with the subcontractor that specifies activities and reporting responsibilities and how sanctions/revocation will be managed if the subcontractor's performance is not adequate
- 1.3. Monitor the subcontractor's performance on an ongoing basis
- 1.4. Provide to DHHS an annual schedule identifying all subcontractors, delegated functions and responsibilities, and when the subcontractor's performance will be reviewed
- 1.5. DHHS shall, at its discretion, review and approve all subcontracts.

If the Contractor identifies deficiencies or areas for improvement are identified, the Contractor shall take corrective action.

DEFINITIONS

As used in the Contract, the following terms shall have the following meanings:

COSTS: Shall mean those direct and indirect items of expense determined by the Department to be allowable and reimbursable in accordance with cost and accounting principles established in accordance with state and federal laws, regulations, rules and orders.

DEPARTMENT: NH Department of Health and Human Services.

FINANCIAL MANAGEMENT GUIDELINES: Shall mean that section of the Contractor Manual which is entitled "Financial Management Guidelines" and which contains the regulations governing the financial activities of contractor agencies which have contracted with the State of NH to receive funds.

PROPOSAL: If applicable, shall mean the document submitted by the Contractor on a form or forms required by the Department and containing a description of the Services to be provided to eligible individuals by the Contractor in accordance with the terms and conditions of the Contract and setting forth the total cost and sources of revenue for each service to be provided under the Contract.

UNIT: For each service that the Contractor is to provide to eligible individuals hereunder, shall mean that period of time or that specified activity determined by the Department and specified in Exhibit B of the Contract.

**New Hampshire Department of Health and Human Services
Exhibit C**



FEDERAL/STATE LAW: Wherever federal or state laws, regulations, rules, orders, and policies, etc. are referred to in the Contract, the said reference shall be deemed to mean all such laws, regulations, etc. as they may be amended or revised from the time to time.

CONTRACTOR MANUAL: Shall mean that document prepared by the NH Department of Administrative Services containing a compilation of all regulations promulgated pursuant to the New Hampshire Administrative Procedures Act. NH RSA Ch 541-A, for the purpose of implementing State of NH and federal regulations promulgated thereunder.

SUPPLANTING OTHER FEDERAL FUNDS: The Contractor guarantees that funds provided under this Contract will not supplant any existing federal funds available for these services.



REVISIONS TO GENERAL PROVISIONS

1. **Subparagraph 4 of the General Provisions of this contract, Conditional Nature of Agreement, is replaced as follows:**

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments, in whole or in part, under this Agreement are contingent upon continued appropriation or availability of funds, including any subsequent changes to the appropriation or availability of funds affected by any state or federal legislative or executive action that reduces, eliminates, or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope of Services provided in Exhibit A, Scope of Services, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of appropriated or available funds. In the event of a reduction, termination or modification of appropriated or available funds, the State shall have the right to withhold payment until such funds become available, if ever. The State shall have the right to reduce, terminate or modify services under this Agreement immediately upon giving the Contractor notice of such reduction, termination or modification. The State shall not be required to transfer funds from any other source or account into the Account(s) identified in block 1.6 of the General Provisions, Account Number, or any other account, in the event funds are reduced or unavailable.

2. **Subparagraph 10 of the General Provisions of this contract, Termination, is amended by adding the following language;**

2.1 The State may terminate the Agreement at any time for any reason, at the sole discretion of the State, 30 days after giving the Contractor written notice that the State is exercising its option to terminate the Agreement.

3. **Bio-Rad Laboratories shall not be liable for consequential, incidental, special or any other indirect damages sustained by the State from the use of its products or services. The aforementioned special provision does not constitute a waiver of the indemnification requirements in the Form P-37, Subparagraph 13 of the General Provisions.**

4. **Subparagraph 14.1.1 of the General Provisions of this contract is deleted and the following paragraph is added:**

14.1.1 Comprehensive General Liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$1,000,000 per occurrence and excess/umbrella liability coverage in the amount of \$1,000,000 per occurrence, and

5. **Contract Extension:** This Agreement has the option to extend for three (3) additional years, to be exercised by mutual agreement by the parties, pending availability of funding, acceptable performance by the Contractor and, subsequent approval by the Governor and Executive Council.



CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS
US DEPARTMENT OF EDUCATION - CONTRACTORS
US DEPARTMENT OF AGRICULTURE - CONTRACTORS**

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner
NH Department of Health and Human Services
129 Pleasant Street,
Concord, NH 03301-6505

1. The grantee certifies that it will or will continue to provide a drug-free workplace by:
 - 1.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - 1.2. Establishing an ongoing drug-free awareness program to inform employees about
 - 1.2.1. The dangers of drug abuse in the workplace;
 - 1.2.2. The grantee's policy of maintaining a drug-free workplace;
 - 1.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 1.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - 1.3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
 - 1.4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
 - 1.4.1. Abide by the terms of the statement; and
 - 1.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - 1.5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 1.4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency




- has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- 1.6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 1.4.2, with respect to any employee who is so convicted
 - 1.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 1.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
 - 1.7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6.
2. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check if there are workplaces on file that are not identified here.

Contractor Name: Bio-Rad Laboratories, Inc.

December 30, 2015
Date


Name: Janette J. Stockert
Title: Contract Administration Supervisor
Government Contracts / Paralegal



**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO
FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS AND
WHISTLEBLOWER PROTECTIONS**

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

Contractor will comply, and will require any subgrantees or subcontractors to comply, with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;
- the Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;
- the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);
- the Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;
- the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;
- the Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;
- the Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;
- 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;
- 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) the Pilot Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Exhibit E

Contractor Initials

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations and Whistleblower protections

New Hampshire Department of Health and Human Services
Exhibit E



In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to comply with the provisions indicated above.

Contractor Name: Bio-Rad Laboratories, Inc.

December 30, 2015

Date

Name: Janette J. Stockert

Title: Contract Administration Supervisor
Government Contracts / Paralegal

Exhibit E

Contractor Initials

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations and Whistleblower protections